

The House Committee on Intragovernmental Coordination - Local Legislation offers the following substitute to SB 7:

A BILL TO BE ENTITLED
AN ACT

To amend an Act revising, superseding, and consolidating the laws relating to the governing authority of DeKalb County and creating a chairman and board of commissioners of said county, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended, particularly by an Act approved April 9, 1981 (Ga. L. 1981, p. 4304), an Act approved March 20, 1990 (Ga. L. 1990, p. 3900), an Act approved April 13, 1992 (Ga. L. 1992, p. 6137), and an Act approved May 12, 2015 (Ga. L. 2015, p. 3811), so as to change a definition regarding the Board of Ethics of DeKalb County to exclude certain employees and persons; to provide for reporting of violations by county employees; to change the manner of appointment and terms of office of the members of the board; to provide for filling of vacancies on the board; to provide for an ethics administrator; to authorize employment of legal counsel; to provide for recusal of members of the board; to provide for preliminary investigations by the board and penalties for violations regarding board inquiries; to provide for related matters; to provide for a referendum; to provide for contingent effective dates and automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

An Act revising, superseding, and consolidating the laws relating to the governing authority of DeKalb County and creating a chairman and board of commissioners of said county, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended, particularly by an Act approved April 9, 1981 (Ga. L. 1981, p. 4304), an Act approved March 20, 1990 (Ga. L. 1990, p. 3900), an Act approved April 13, 1992 (Ga. L. 1992, p. 6137), and an Act approved May 12, 2015 (Ga. L. 2015, p. 3811), is amended by revising paragraph (8) of subsection (b) of Section 22A as follows:

"(8) 'Official or employee' means any person elected or appointed to or employed or retained by DeKalb County or any agency, whether paid or unpaid and whether part time or full time. This definition includes retired employees or former county employees

during the period of time in which they are later employed or retained by the county or any agency, but does not otherwise include retired employees or former county employees or persons elected or appointed to or retained by DeKalb County or any agency. This definition does not include superior and state court judges and their immediate staffs, the district attorney, the solicitor of the state court, the clerks of the superior and state courts, the magistrates, the sheriff, the judge of the juvenile court, the judge of the probate court, the tax commissioner, and their respective staffs."

SECTION 2.

Said Act is further amended by revising subsection (d) of Section 22A as follows:

"(d) Disclosure of interests. An official or employee who has an interest that he or she has reason to believe may be affected by his or her official acts or actions or by the official acts or actions of another official or employee of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the Board of Ethics and ask for the board's opinion as to the propriety of such interest. Every official or employee who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, shall make full disclosure of such interest to the Chief Executive and the Commission and to the ethics administrator and the Board of Ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the Board of Ethics."

SECTION 3.

Said Act is further amended by revising subsection (f) of Section 22A as follows:

"(f) Reporting violations.

(1) Except as otherwise provided in paragraph (2) of this subsection, any person who witnesses or becomes aware of a violation of this section may complain of the violation as follows:

(A) A complaint may be communicated anonymously to the ethics administrator. Such complaint shall be made in good faith and with veracity and sufficient specificity so as to provide the ethics administrator with salient and investigable facts. The ethics administrator may require the anonymous complaint to be made in a manner and form that is intended only to obtain relevant facts related to the alleged violation of this section and that is not designed to reveal the identity of the complainant;

(B) A sworn written complaint may be filed with the ethics administrator of the Board of Ethics, as described in this paragraph. All written complaints to be considered by

the Board of Ethics and the ethics administrator shall contain the following, if applicable:

- (i) The name and address of the person or persons filing the complaint;
- (ii) The sworn verification and signature of the complainant;
- (iii) The name and address of the party or parties against whom the complaint is filed and, if such party is a candidate, the office being sought;
- (iv) A clear and concise statement of acts upon which the complaint is based along with an allegation that such facts constitute one or more violations of law under the jurisdiction of the Board of Ethics;
- (v) A general reference to the allegedly violated statutory provision(s) of the code of ethics within the jurisdiction of the Board of Ethics; and
- (vi) Any further information which might support the allegations in the complaint including, but not limited to, the following:

(I) The names and addresses of all other persons who have first-hand knowledge of the facts alleged in the complaint; and

(II) Any documentary evidence that supports the facts alleged in the complaint;

(C) Upon receipt of a complaint, whether by the ethics administrator or by the Board of Ethics, the ethics administrator or the secretary of the Board of Ethics shall send a written notice to the subject of the complaint by the next business day. Both this notice and any subsequent documents shall be subject to Article 4 of Chapter 18 of Title 50 of the O.C.G.A; or

(D) Upon receipt of a written, nonanonymous complaint which does not conform to the applicable requirements of subparagraph (B) of this subsection, the ethics administrator shall by letter acknowledge receipt of the complaint and advise the complainant of the defect in the complaint and that the complaint will not be considered by the Board of Ethics unless the defect is corrected.

(2) A county employee, prior to communicating to the ethics administrator a complaint regarding his or her immediate supervisor, shall exhaust all administrative remedies available under the county's applicable human resources policies and procedures. It shall be the duty of the ethics administrator to confirm with the county human resources and merit system director all county employees' compliance with this paragraph."

SECTION 4.

Said Act is further amended in paragraphs (2) through (4) of subsection (h) of Section 22A as follows:

"(2)(A) The members of the Board of Ethics in office on the effective date of this section shall serve until December 31, 2019, and then their terms shall terminate. A

new board shall be appointed as provided in this paragraph to take office on January 1, 2020, and to serve for the terms prescribed in this paragraph.

(B) Not later than December 31, 2019, the members of the new Board of Ethics shall be selected as follows:

(i) Two members shall be appointed by majority vote of the DeKalb County legislative delegation in the House of Representatives of the Georgia General Assembly, which legislative delegation shall be composed of all Representatives in the Georgia General Assembly whose districts are wholly or partially located in DeKalb County;

(ii) Two members shall be appointed by majority vote of the DeKalb County legislative delegation in the Senate of the Georgia General Assembly, which legislative delegation shall be composed of all Senators in the Georgia General Assembly whose districts are wholly or partially located in DeKalb County;

(iii) One member shall be appointed by nomination by the Chief Executive, confirmed by a majority vote of the Commission;

(iv) One member shall be appointed by the judge of the Probate Court of DeKalb County;

(v) One member shall be appointed by the chief judge of the Superior Court of DeKalb County;

(vi) Two alternate members shall be appointed by majority vote of the DeKalb County legislative delegation in the House of Representatives; and

(vii) Two alternate members shall be appointed by majority vote of the DeKalb County legislative delegation in the Senate.

(C) The members shall each serve for terms of two years; provided, however, that the initial terms of the first appointees of the chief judge of the Superior Court of DeKalb County and the judge of the Probate Court of DeKalb County shall each be one year.

(D) Successors to all members of the Board of Ethics and future successors shall be appointed by the respective appointing authorities not less than 30 days prior to the expiration of each such member's term of office, and such successors shall take office on January 1 following such appointment and shall serve terms of two years and until their respective successors are appointed and qualified. No individual may be appointed to more than two consecutive terms.

(E) All appointments to the Board of Ethics shall be made by the respective appointing entities no later than March 31 of each year. In the event that any appointment is not made within 30 days, the chief judge of the Superior Court of DeKalb County shall be authorized to fill any resulting vacant positions on the Board of Ethics.

(F) The board shall adopt policies and procedures subject to review by the Chief Executive and confirmation by a majority vote of the Commission, which vote shall occur within 30 days of submission of such policies and procedures to the Chief Executive. Should said vote not occur within said time, such policies and procedures shall be of full force and effect without confirmation by the Commission.

(3) If a member of the Board of Ethics ceases to be a resident of DeKalb County, that member's position on the Board of Ethics, by operation of law, shall become vacant upon the establishment of the fact of such nonresidency, if contested, by a court of competent jurisdiction. A vacancy in the Board of Ethics shall exist by reason of death, the disability or incapacity of a member for more than 90 days, resignation, or loss of residency as described in this paragraph. A member of the Board of Ethics may be removed from office during a term if the member becomes ineligible to hold civil office within the meaning of Code Section 45-2-1 of the O.C.G.A. and that ineligibility is established by decision of a court of competent jurisdiction which declares the office vacant because of such ineligibility or for good cause by a majority vote of the Board of Ethics. The ethics administrator shall notify the appointing authority of a vacancy upon its occurrence, and such vacancy shall be filled for the unexpired term by the respective appointing authority.

(4) The members of the Board of Ethics shall serve without compensation and shall elect from their own membership a chairperson and otherwise provide for their own internal organization. The Commission shall provide adequate office and meeting space and pay all administrative costs, including those specifically stipulated in this section, pertaining to the operation of the Board of Ethics. The Board of Ethics shall be authorized to employ its own staff and clerical personnel and contract for the services of a competent court reporter, an attorney, and a private investigator as it deems necessary. In the event that the Board of Ethics determines that employment of full-time legal counsel would best facilitate the accomplishment of its purposes under this section, the Board of Ethics may employ an attorney for such purpose, and the Commission shall appropriate reasonably sufficient funds for such position. The members of the Board of Ethics shall have the authority to propose the budget of the board and shall recommend the budget to the Commission, who shall fund it as a priority. In the event that the proposed budget is in excess of \$300,000.00, the Commission shall have the authority to authorize the additional funds requested in accordance with standard budgetary procedures and requirements. The Board of Ethics shall be completely independent and shall not be subject to control or supervision by the Chief Executive, the Commission, or any other official or employee or agency of the county government."

SECTION 5.

Said Act is further amended by revising subsection (i) of Section 22A as follows:

"(i) Ethics administrator.

(1) There is hereby created as a full-time salaried position an ethics administrator for DeKalb County. The ethics administrator must possess a bachelor's degree. The ethics administrator shall be appointed by a majority of the members of the Board of Ethics for a period not to exceed six years. Removal of the ethics administrator before the expiration of the designated term shall be for cause by a majority vote of the members of the Board of Ethics.

(2) The ethics administrator shall not be involved in partisan or nonpartisan political activities and shall be available to give technical assistance as requested by the county governing authority or any member of the General Assembly whose district is wholly or partially located in DeKalb County.

(3) The duties of the ethics administrator shall include, but not be limited to, the following:

(A) Educating and training all county officials and employees to have an awareness and understanding of the mandate for and enforcement of ethical conduct and advising them of the provisions of the code of ethics of DeKalb County;

(B) Maintaining the records of the Board of Ethics as required by Article 4 of Chapter 18 of Title 50 of the O.C.G.A. and providing an updated copy of such records to the clerk of the governing authority;

(C) Meeting with the Board of Ethics;

(D) Advising officials and employees regarding disclosure statements and reviewing the same to ensure full and complete financial reporting;

(E) Monitoring and evaluating information obtained from an 'ethics hotline' which shall be a city telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public administrator or employee as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;

(F) Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual, or is written. Such notice shall be given in writing, by facsimile, or hand delivered to the subject of the complaint at the same time and in the same form that any disclosure of information is required as provided by Article 4 of Chapter 18 of Title 50 of the O.C.G.A.;

(G) Notifying the Board of Ethics of any report of an alleged violation of the ethics code; and

(H) Filing with the Board of Ethics, the Chief Executive, and the Commission on the first Tuesday of each February a written report describing the activities of the ethics administrator in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County."

SECTION 6.

Said Act is further amended by revising paragraphs (1) through (5) of subsection (j) of Section 22A and by adding a new paragraph to said section to read as follows:

"(j) Investigations and hearings. The Board of Ethics shall have the authority to conduct investigations into all alleged violations of the code of ethics, hold hearings, and issue decisions as prescribed in this subsection:

(1) The proceedings and records of the Board of Ethics shall be open unless otherwise permitted by state law;

(2) Upon request of the Board of Ethics, the Solicitor of DeKalb County or any attorney representing the office of the Solicitor of DeKalb County shall only advise the Board of Ethics;

(3) A complaint may be filed by any resident or group of residents of DeKalb County by submitting to the office of the ethics administrator a written, verified, and sworn complaint under the penalty of perjury or false swearing. The complaint shall specifically identify all provisions of the DeKalb County code of ethics which the subject of the complaint is alleged to have violated, set forth facts as would be admissible in evidence in a court proceeding, and show affirmatively that the complainant or affiant (if in addition to or different from the complainant) is competent to testify to the matter set forth therein. All documents referenced in the complaint as well as supporting affidavits shall be attached to the complaint;

(4) Upon receipt of the complaint, the ethics administrator shall provide the complaint to the Board of Ethics, which shall conduct a preliminary investigation to determine whether it meets the jurisdictional requirements as set forth in this section. The ethics administrator shall provide administrative and other support to the Board of Ethics regarding each such preliminary investigation. If in the opinion of the Board of Ethics the complaint fails to meet these requirements, the ethics administrator shall notify the person who filed the complaint, and he or she shall have ten days from the date of notice to correct and refile the complaint directly with the ethics administrator. A complaint which fails to satisfy the jurisdictional requirements as established by this section and by the rules and procedures established by the Board of Ethics shall be dismissed by the Board of Ethics no later than 30 days after the complaint is filed with the office of the ethics administrator, unless extended by a majority vote of the Board of Ethics; and

(5)(A) If the Board of Ethics determines no probable cause for belief that this section has been violated, the ethics administrator shall so notify the complainant and the subject of the investigation, and the complaint shall be dismissed. If the Board of Ethics determines that there is probable cause for belief that this section has been violated, the ethics administrator shall give notice to the person involved to attend a hearing to determine whether there has been a violation of this section.

(B) The provisions of Code Section 45-10-3 of the O.C.G.A. shall apply to members of the Board of Ethics, and a member shall recuse himself or herself from a hearing held pursuant to this subsection in the event that such member has a conflict of interest pursuant to such Code section."

"(8)(A) The Board of Ethics shall render no final decision regarding any matter involving any individual who has qualified to run for any DeKalb County elected office during the 45 days preceding the election for such office.

(B) The Board of Ethics shall file with the Chief Executive and the Commission on the first Tuesday of each February a written report describing the activities of the ethics administrator in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of DeKalb County."

SECTION 7.

Said Act is further amended by revising paragraph (1) of subsection (k) of Section 22A as follows:

"(1) Any intentional violation of this section, furnishing of false or misleading information to the Board of Ethics, failure to follow an opinion rendered by the Board of Ethics, or failure to comply with a subpoena issued by the Board of Ethics pursuant to this section shall subject the violator to any one or more of the following:

(A) Administrative sanction of not more than \$1,000.00 assessed by the Board of Ethics;

(B) Public reprimand by the Board of Ethics; and

(C) Prosecution by the DeKalb County solicitor in magistrate court and, upon conviction, a fine of up to \$1,000.00 per violation and up to six months' imprisonment, whether the official or employee is elected or appointed, paid, or unpaid. Nothing in this section shall be interpreted to conflict with state law. An action for violation of this section or the furnishing of false or misleading information or the failure to comply with a subpoena issued by the Board of Ethics must be brought within two years after the violation is discovered."

SECTION 8.

The election superintendent of DeKalb County shall call and conduct an election as provided in this section for the purpose of submitting this Act to the electors of DeKalb County for approval or rejection. The election superintendent shall conduct that election on the Tuesday next following the first Monday in November, 2019, and shall issue the call and conduct that election as provided by general law. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of DeKalb County. The ballot shall have written or printed thereon the words:

"() YES Shall the Act be approved which revises the Board of Ethics for DeKalb
() NO County?"

All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for approval of the Act, Sections 1 through 5 of this Act shall become of full force and effect immediately. If the Act is not so approved or if the election is not conducted as provided in this section, Sections 1 through 5 of this Act shall not become effective, and this Act shall be automatically repealed on the first day of January immediately following that election date. The expense of such election shall be borne by DeKalb County. It shall be the election superintendent's duty to certify the result thereof to the Secretary of State.

SECTION 9.

Except as otherwise provided in Section 8 of this Act, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.